



TAX FACTS

From the
State of Hawaii, Department of Taxation

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OFFERS IN COMPROMISE

2000-2

The Department of Taxation utilizes a wide range of collection actions in order to settle delinquent accounts. One of the lesser known and infrequently requested actions is the exercise of the Department's authority to compromise the outstanding delinquent tax liabilities of taxpayers. The compromise program applies only to the taxes administered by the Department of Taxation. It does not apply to unemployment insurance, insurance premiums, and real property taxes which are administered by other state or county agencies. This publication is intended to provide general information concerning the submission of compromise offers and to answer some of the more frequently asked questions regarding the compromise program.

1. What is a compromise offer?

A compromise offer is submitted by a taxpayer to the Department in order to settle an outstanding delinquent tax liability (tax, penalty, and interest). The amount offered is usually less than the amount actually owed by the taxpayer and is based upon doubt as to liability, doubt as to collectibility, or both.

2. What is "doubt as to liability"?

"Doubt as to liability" means that there is some uncertainty about whether the amount that the Department says is owed is in fact the correct amount.

For example, there may be "doubt as to liability" when all or part of the balance owed is due to an overlooked deduction or credit that the taxpayer can substantiate but cannot now claim because the statute of limitations has expired.

3. What is "doubt as to collectibility"?

"Doubt as to collectibility" means that the Department does not think that the taxpayer will ever be able to pay the full amount of the taxes, penalties and interest owed no matter how long the Department waits.

For example, there may be "doubt as to collectibility" when a taxpayer with an outstanding tax liability has no assets, is in poor health (which is substantiated with a physician's report), and has no future earning potential.

4. How do taxpayers submit a compromise offer?

Complete Form CM-1, Offer in Compromise, and submit it to the Department. Attach to Form CM-1 a Statement of Financial Condition and Other Information (Form CM-2 for an individual taxpayer or Form CM-2B for a corporation, partnership or other non-individual taxpayer).

Since the taxpayer should already be working with a collector, the collector provides the appropriate forms and also requests any additional documents that will be required. The request may include copies of bank statements, copies of deeds to real property, etc.

5. Can federal compromise offer forms be used to submit an offer to the State?

The federal offer in compromise form, Form 656, cannot be substituted for the State's Form CM-1. However, other documents such as the current financial statements included in a compromise offer submitted to the Internal Revenue Service may be submitted to the State.

6. Does the Department continue its collection activities after a compromise offer is submitted?

No. Collection activities (additional liens, levies, garnishee, referral to outside collection agency, etc.) against the taxpayer are suspended while the compromise offer is being investigated and evaluated. Also, no collection action is taken while a rejected compromise offer is being appealed.

However, if the Department finds that the compromise offer is merely a tactic to delay collection actions or if the delay jeopardizes the Department's

ability to collect the outstanding tax liabilities, action will be taken to protect the State's interests.

7. Must a taxpayer continue to make the monthly payments required by an installment agreement after submitting an offer in compromise?

Yes. The monthly payments required by the installment agreement must be made while the compromise offer is being considered.

8. How is the amount offered in the compromise determined?

The amount offered in the compromise varies depending on the reason for the compromise.

If the compromise is offered because there is doubt as to liability, then the amount offered may be the amount that the taxpayer believes is the correct tax liability owed.

If the compromise is offered because there is doubt as to collectibility, then the amount offered is usually the amount that the taxpayer believes is appropriate given the taxpayer's current financial condition and future earning potential.

9. Is any part of the amount offered in the compromise required to be paid when Form CM-1, Offer in Compromise, is submitted?

No. However, the Department would prefer payment in full as a sign of good faith and commitment on the part of the taxpayer.

If the compromise offer is rejected, any payment made with the compromise offer may be returned to the taxpayer (without interest) or, if desired, credited to the taxpayer's delinquent balance.

10. What happens after a compromise offer is submitted to the Department?

The compromise offer will go to the collector assigned to the account for an initial review.

First, the collector verifies that the taxpayer has filed all required tax returns to ensure that the taxpayer's total tax liability is known. Next, the collector will review and evaluate all of the compromise offer forms and documents submitted. Selected information will be verified and additional documentation may be requested from the taxpayer to clarify or substantiate any claims made.

Finally, the collector makes the initial determination to either accept or reject the

compromise offer as filed. The collector also could recommend that the offer be accepted with modifications. For example, the collector could recommend acceptance if the amount offered was larger or if the taxpayer agreed to sign collateral agreements pertaining to future earnings or tax benefits. These modifications to the compromise offer are open to discussion and limited negotiation.

A compromise offer that has been tentatively accepted by the collector is summarized and reviewed first by division supervisors and then by the Director of Taxation. If the Director of Taxation approves the offer in compromise, the offer is forwarded to the Governor for final review and approval signature.

The taxpayer will receive written notification whether the compromise offer is rejected or approved by the Governor.

11. When is a collateral agreement required?

A collateral agreement pertaining to future earnings or tax benefits may be required for various reasons, particularly if the taxpayer has an ongoing business or future earning potential. For the duration of the collateral agreement, the taxpayer must file current tax returns timely and pay in full or the compromise offer will be voided.

12. Are the compromise offers and all related information kept confidential?

No. Section 231-3(10), Hawaii Revised Statutes, requires that a statement on each approved compromise be placed on file at the Department of Taxation and be open to public inspection. The statement must contain the: (1) name of the taxpayer and the amount and type of tax assessed; (2) amount of penalties and interest imposed; (3) total amount of the liability, actual payments made, and payment dates; and (4) reasons for the compromise.

13. Do the Department of Taxation and Internal Revenue Service (IRS) have a joint offer in compromise program?

No. A joint compromise program was attempted, but statutory requirements and other significant differences have prevented its implementation.

14. Do the Department of Taxation and IRS have similar procedures for reviewing offers in compromise?

Generally yes, but there are significant differences in the way compromise offers are processed and evaluated by each agency.

For example, the IRS has personnel specifically assigned to the evaluation of compromise offers. The Department of Taxation does not have specialized personnel for this purpose; the same collector initially assigned to a taxpayer's account also evaluates and reviews a compromise offer submitted by that taxpayer.

Another major difference that affects whether an offer is accepted or not is that the IRS must collect delinquent taxes within a ten year statute of limitations whereas the Department of Taxation has no such limitation placed on its collection activities.

15. If a compromise offer has been accepted by the IRS, will a similar compromise offer be automatically approved by the State?

No. Acceptance of an offer in compromise by the IRS does not automatically guarantee acceptance by

the State and vice versa. A compromise offer tendered to the Department of Taxation is reviewed and evaluated on its own merits.

16. If an offer in compromise is accepted, what happens to any liens that the Department of Taxation may have placed on the taxpayer's assets?

The liens will be released once the compromise offer is paid in full and the lien release fee is paid.

17. Can a taxpayer go on a payment plan for the compromise offer amount?

Yes. The compromise offer amount can be paid in monthly installments. However, all current tax returns must be timely filed and paid during the installment agreement or the compromise offer will be voided. Also, liens will not be released until the entire compromise offer is paid in full and the lien release fee is paid.

STATE DISTRICT TAX OFFICE ADDRESSES & TELEPHONE NUMBERS

Website (Forms & Information)
www.state.hi.us/tax

Forms by Mail
808-587-7572
Toll-Free: 1-800-222-7572

Forms by FAX
Oahu 587-7572
Outside Oahu 808-678-0522
from your fax machine

CD-ROM (Forms & Info)
Nominal Cost (Limited Supply)

Recorded Tax Updates
808-587-1234 and press 7700

Telephone Devices for the Deaf (TDD)
Tax Service & Processing
808-587-1418
Toll-Free: 1-800-887-8974

Oahu District Tax Office
Princess Ruth Keelikolani Bldg.
830 Punchbowl Street
Honolulu, HI 96813-5094

Maui District Tax Office
State Office Building
54 South High Street, #208
Wailuku, HI 96793-2198

Hawaii District Tax Office
State Office Building
75 Aupuni Street, #101
Hilo, HI 96720-4245

Kauai District Tax Office
State Office Building
3060 Eiwa Street, #105
Lihue, HI 96766-1889

Tax Information
Telephone No.: 808-587-4242
Jan.-April 20: 808-587-6515
Toll-Free: 1-800-222-3229
Fax No.: 808-587-1488
E-mail:
Taxpayer_Services@tax.state.hi.us

Telephone No.: 808-984-8500
Fax No.: 808-984-8522
E-mail:
Maui_Office@tax.state.hi.us

Telephone No.: 808-974-6321
Fax No.: 808-974-6300
E-mail:
Hilo_Office@tax.state.hi.us

Telephone No.: 808-274-3456
Fax No.: 808-274-3461
E-mail:
Kauai_Office@tax.state.hi.us